

AN ACT

RELATING TO ENERGY; AMENDING SECTIONS OF THE NMSA 1978 TO PROVIDE FOR ENERGY EFFICIENCY AND LOAD MANAGEMENT FOR PUBLIC UTILITY CUSTOMERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 62-3-1 NMSA 1978 (being Laws 1967, Chapter 96, Section 2) is amended to read:

"62-3-1. DECLARATION OF POLICY.--

A. Public utilities, as defined in Section 62-3-3 NMSA 1978, are affected with the public interest in that, among other things:

(1) a substantial portion of public utilities' business and activities involves the rendition of essential public services to a large number of the general public;

(2) public utilities' financing involves the investment of large sums of money, including capital obtained from many members of the general public; and

(3) the development and extension of public utilities' business directly affects the development, growth and expansion of the general welfare, business and industry of the state.

B. It is the declared policy of the state that the public interest, the interest of consumers and the interest of

investors require the regulation and supervision of public utilities to the end that reasonable and proper services shall be available at fair, just and reasonable rates and to the end that capital and investment may be encouraged and attracted so as to provide for the construction, development and extension, without unnecessary duplication and economic waste, of proper plants and facilities and demand-side resources for the rendition of service to the general public and to industry."

Section 2. Section 62-8-6 NMSA 1978 (being Laws 1941, Chapter 84, Section 42, as amended) is amended to read:

"62-8-6. DISCRIMINATION.--No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person within any classification or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage. No public utility shall establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service. Nothing shall prohibit, however, the commission from approving economic development rates and rates designed to retain load or from approving energy efficiency programs designed to reduce the burden of energy costs on low-income customers pursuant to the Efficient Use of Energy Act."

Section 3. Section 62-17-2 NMSA 1978 (being Laws 2005, Chapter 341, Section 2) is amended to read:

"62-17-2. FINDINGS.--The legislature finds that:

A. energy efficiency and load management are cost-effective resources that are an essential component of the balanced resource portfolio that public utilities must achieve to provide affordable and reliable energy to public utility consumers;

B. energy efficiency and load management in New Mexico are resources that are currently underutilized, and it is necessary and appropriate to provide rate treatment and financial incentives to public utilities to develop all cost-effective and achievable energy efficiency and load management resources;

C. public and municipal utility energy efficiency and load management programs present opportunities to increase New Mexico's energy security, protect New Mexico energy consumers from price increases, preserve the state's natural resources and pursue an improved environment in New Mexico;

D. energy efficiency and load management programs by public utilities in accordance with the Efficient Use of Energy Act can bring significant economic benefits to New Mexico;

E. it serves the public interest to support public utility development of all cost-effective energy efficiency and load management by removing, to the extent possible, regulatory disincentives and allowing recovery of costs for

reasonable and prudently incurred expenses of energy efficiency and load management programs and also allowing public utilities the opportunity to earn a profit on cost-effective energy efficiency and load management resource development that, with satisfactory program performance, is financially more attractive than developing supply-side resources, while at the same time ensuring it is done in a manner that balances the public interest, consumers' interests and investors' interests;

F. utility energy efficiency and load management programs for economically disadvantaged New Mexicans, in conjunction with low-income weatherization programs managed by the state of New Mexico, will reduce the burden of utility costs on low-income customers;

G. cost-effective energy efficiency and load management programs undertaken by public utilities can provide significant reductions in greenhouse gas emissions, regulated air emissions, water consumption and natural resource depletion, and can avoid or delay the need for more expensive generation, transmission and distribution infrastructure;

H. New Mexico should participate in regional efforts to reduce energy consumption by twenty percent by 2020 through programs to reduce energy consumption;

I. public utility resource planning to meet New Mexico's energy service needs should be identified and

evaluated on an ongoing basis in accordance with the principles of integrated resource planning; and

J. it is necessary and appropriate to allow distribution cooperative utilities to participate in the implementation of energy efficiency programs in ways that differ from rules applicable to public utilities that are not customer owned."

Section 4. Section 62-17-3 NMSA 1978 (being Laws 2005, Chapter 341, Section 3) is amended to read:

"62-17-3. POLICY.--It is the policy of the Efficient Use of Energy Act that public utilities, distribution cooperative utilities and municipal utilities include all cost-effective energy efficiency and load management programs in their energy resource portfolios, that regulatory disincentives to public utility development of cost-effective energy efficiency and load management be removed in a manner that balances the public interest, consumers' interests and investors' interests and that the commission provide public utilities an opportunity to earn a profit on cost-effective energy efficiency and load management resources that, with satisfactory program performance, is financially more attractive to the utility than supply-side resources."

Section 5. Section 62-17-4 NMSA 1978 (being Laws 2005, Chapter 341, Section 4) is amended to read:

"62-17-4. DEFINITIONS.--As used in the Efficient Use of

Energy Act:

A. "achievable" means those energy efficiency or load management resources available to the utility using its best efforts;

B. "commission" means the public regulation commission;

C. "cost-effective" means that the energy efficiency or load management program meets the total resource cost test;

D. "customer" means a utility customer at a single, contiguous field, location or facility, regardless of the number of meters at that field, location or facility;

E. "distribution cooperative utility" means a utility with distribution facilities organized as a rural electric cooperative pursuant to Laws 1937, Chapter 100 or the Rural Electric Cooperative Act or similarly organized in other states;

F. "energy efficiency" means measures, including energy conservation measures, or programs that target consumer behavior, equipment or devices to result in a decrease in consumption of electricity and natural gas without reducing the amount or quality of energy services;

G. "large customer" means a customer with electricity consumption greater than seven thousand megawatt-hours per year or natural gas use greater than three hundred

sixty thousand decatherms per year;

H. "load management" means measures or programs that target equipment or devices to result in decreased peak electricity demand or shift demand from peak to off-peak periods;

I. "public utility" means a public utility that is not also a distribution cooperative utility; and

J. "total resource cost test" means a standard that is met if the monetary costs that are borne by the utility and the participants and that are incurred to develop, acquire and operate energy efficiency or load management resources on a life-cycle basis are less than the avoided monetary costs associated with developing, acquiring and operating the associated supply-side resources. In developing this test for energy efficiency and load management programs directed to low-income customers, the commission shall either quantify or assign a reasonable value to reductions in working capital, reduced collection costs, lower bad-debt expense, improved customer service effectiveness and other appropriate factors as utility system economic benefits."

Section 6. Section 62-17-5 NMSA 1978 (being Laws 2005, Chapter 341, Section 5, as amended) is amended to read:

"62-17-5. COMMISSION APPROVAL--ENERGY EFFICIENCY AND LOAD MANAGEMENT PROGRAMS--DISINCENTIVES.--

A. Pursuant to the findings and purpose of the

Efficient Use of Energy Act, the commission shall consider public utility acquisition of cost-effective energy efficiency and load management resources to be in the public interest.

B. The commission shall direct public utilities to evaluate and implement cost-effective programs that reduce energy demand and consumption.

C. Before the commission approves an energy efficiency and load management program for a public utility, it must find that the portfolio of programs is cost-effective and designed to provide every affected customer class with the opportunity to participate and benefit economically. The commission shall determine the cost-effectiveness of energy efficiency and load management measures using the total resource cost test.

D. The commission shall act expeditiously on public utility requests for approval of energy efficiency or load management programs.

E. Public utilities shall obtain commission approval of energy efficiency and load management programs before they are implemented. Public utilities proposing new energy efficiency and load management programs shall, before seeking commission approval, solicit nonbinding recommendations on the design, implementation and use of third-party energy service contractors through competitive bidding on the programs from commission staff, the attorney

general, the energy, minerals and natural resources department and other interested parties. The commission may for good cause require utilities to solicit competitive bids for energy efficiency and load management resources.

F. The commission shall, upon petition or its own motion, identify regulatory disincentives or barriers for public utility expenditures on energy efficiency and load management measures and ensure that they are removed in a manner that balances the public interest, consumers' interests and investors' interests. The commission shall also provide public utilities an opportunity to earn a profit on cost-effective energy efficiency and load management resource development that, with satisfactory program performance, is financially more attractive to the utility than supply-side utility resources.

G. Public utilities providing electricity and natural gas service to New Mexico customers shall, subject to commission approval, acquire all cost-effective and achievable energy efficiency and load management resources available in their service territories. This requirement, however, for public utilities providing electricity service, shall not be less than savings of five percent of 2005 total retail kilowatt-hour sales to New Mexico customers in calendar year 2014 and ten percent of 2005 total retail kilowatt-hour sales to New Mexico customers in 2020 as a result of energy

efficiency and load management programs implemented starting in 2007.

H. A utility that determines it cannot achieve the minimum requirements established in Subsection G of this section shall report to the commission on why it cannot meet those requirements and shall propose alternative requirements based on acquiring all cost-effective and achievable energy efficiency and load management resources. If the commission determines, after hearing, that the minimum requirements of Subsection G of this section exceed the achievable amount of energy efficiency and load management available to the utility, the commission shall establish lower minimum energy savings requirements for the utility based on the maximum amount of energy efficiency and load management that it determines can be achieved."

Section 7. Section 62-17-6 NMSA 1978 (being Laws 2005, Chapter 341, Section 6, as amended) is amended to read:

"62-17-6. COST RECOVERY.--

A. A public utility that undertakes cost-effective energy efficiency and load management programs shall have the option of recovering its prudent and reasonable costs along with commission-approved incentives for demand-side resources and load management programs implemented after the effective date of the Efficient Use of Energy Act through an approved tariff rider or in base rates, or by a combination of the two.

Program costs and incentives may be deferred for future recovery through creation of a regulatory asset. The only limit to the tariff rider or customer impact for any utility customer is that it shall not exceed seventy-five thousand dollars (\$75,000) per year without the customer's consent. Unless otherwise ordered by the commission, a tariff rider approved by the commission shall require language on customer bills explaining program benefits.

B. The tariff rider shall be applied on a monthly basis, unless otherwise allowed by the commission.

C. A tariff rider proposed by a public utility to fund approved energy efficiency and load management programs shall go into effect thirty days after filing, unless suspended by the commission for a period not to exceed one hundred eighty days. If the tariff rider is not approved or suspended within thirty days after filing, it shall be deemed approved as a matter of law. If the commission has not acted to approve or disapprove the tariff rider by the end of an ordered suspension period, it shall be deemed approved as a matter of law. The commission shall approve utility reconciliations of the tariff rider annually."

Section 8. Section 62-17-8 NMSA 1978 (being Laws 2005, Chapter 341, Section 8) is amended to read:

"62-17-8. MEASUREMENT AND VERIFICATION.--

A. A public utility shall submit to the commission

an annual report that provides information relating to the actions taken by the public utility to comply with the standards of the Efficient Use of Energy Act. The report shall include documentation of program expenditures, customer participation levels, estimated energy savings, demand reductions and customer monetary savings resulting from programs, evaluation of the cost-effectiveness of expenditures, evaluation of the cost-effectiveness of self-directed programs, a qualitative assessment of program effectiveness and any other information the commission may require pursuant to its rulemaking authority.

B. At least every three years, a public utility shall submit to the commission a comprehensive measurement, verification and program evaluation report prepared by an independent program evaluator. In preparing the report, the independent program evaluator shall measure and verify energy and demand savings, determine cost-effectiveness of the programs, assess the performance of the public utility in implementing energy efficiency and load management programs and, as appropriate, provide recommendations on how program performance can be improved.

C. The commission may direct a public utility to modify or terminate a particular energy efficiency or load management program if, after an adequate period for implementation of the program, the commission determines the

program is not sufficiently meeting its goals and purposes. Termination of a program or programs shall be accomplished in a manner that allows the utility to fully recover its reasonable and prudent program costs."

Section 9. Section 62-17-11 NMSA 1978 (being Laws 2005, Chapter 341, Section 11) is amended to read:

"62-17-11. DISTRIBUTION COOPERATIVE UTILITIES.--

A. Distribution cooperative utilities shall periodically examine the potential to assist their customers in reducing energy consumption or peak electricity demand in a cost-effective manner. Based on these studies, by January 1, 2009, distribution cooperative utilities shall establish energy efficiency and load management targets and begin to implement cost-effective energy efficiency and load management programs that are economically feasible and practical for their members and customers. Approval for such programs shall reside with the governing body of each distribution cooperative utility and not with the commission.

B. Each distribution cooperative utility shall file with the commission concurrently with its annual report, a report that describes all of the distribution cooperative utility's programs or measures that promote energy efficiency, conservation or load management. The report shall set forth the costs of each of the programs or measures for the previous calendar year and the resulting effect on the consumption of

electricity. In offering or implementing energy efficiency, conservation or load management programs, a distribution cooperative utility shall attempt to minimize any cross-subsidies between customer classes.

C. Each distribution cooperative utility shall include in the report required by Subsection B of this section a description of all programs or measures to promote energy efficiency, conservation or load management that are planned and the anticipated date for implementation.

D. Costs resulting from programs or measures to promote energy efficiency, conservation or load management may be recovered by the distribution cooperative utility through its general rates. In requesting approval to recover such costs in general rates, the distribution cooperative utility may elect to use the procedure set forth in Subsection G of Section 62-8-7 NMSA 1978." _____